

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS

In re:

TOP LINE GRANITE DESIGN INC.,¹

Debtor.

Chapter 11

Case No. 22-40216 (EDK)

**OBJECTION TO THE UNITED STATES TRUSTEE'S MOTION
TO CONVERT OR DISMISS DEBTOR'S CHAPTER 11 CASE**

Top Line Granite Design Inc. (the “**Debtor**”) files this objection to the United States Trustee’s Motion To Convert Case To Case Under Chapter 7, Or, In The Alternative, To Dismiss Case [Doc. No. 240] (the “**UST’s Motion**”) on the following grounds:

1. The gravamen of whether or not to dismiss or convert a chapter 11 case to chapter 7 is for the Court to determine what is in the best interests of creditors and of the bankruptcy estate. 11 U.S.C. §1112(b)(1).

2. The Debtor had to make a difficult, but necessary, decision when it considered the necessity of agreeing to a sale after it could not sustain and revive operations. The effect of COVID and of state mandated closure followed by supply chain disruptions and later by the inability to recapture a surfeit of work made it difficult for the Debtor to continue its business reorganization efforts, which forced the Debtor to move to sell its business assets as a going concern with the assent of its major secured creditors.

3. First, the Debtor expects that the going concern sale already approved by the Court will close by March 7, 2023 (before the hearing on the UST’s Motion). Indeed, the buyer’s counsel and funding source has confirmed documents are approved and readied to be

¹ A/k/a Design Top Line Granite, and aka Top Line Granite Design. The Debtor’s name was changed from Brazil Stones Inc. in November 2005

signed. In fact, today the closing status and readiness was confirmed, commencing with an email from the buyer's counsel annexed hereto as Exhibit 1 and reconfirmed to both Debtor's counsel and to the Subchapter V Trustee by all the constituent parties to the sale.

4. Second, no creditor has objected to the Debtor's proposed sale of its business assets, and no creditor has moved to convert the chapter 11 case. Moreover, the Debtor's counsel has been engaged in active negotiations for an alternative or supplemental transaction.

5. Thus, while the sale closing, approved by the Court, has been delayed causing considerable frustration, the Subchapter V Trustee maintained communications (as does Debtor's counsel) with the actual funding source and business finance broker (known personally to the Subchapter V Trustee from work in other cases).

6. The alternative of conversion only erodes value for the unsecured creditors. A proposed amended chapter 11 plan of liquidation is ready to file having been circulated for comments and supported by creditors. The Debtor's counsel and Subchapter V Trustee have the experience and expertise and have done their necessary investigatory homework in determining the numerous adversary proceedings to be pursued which will be pursuant to the plan, as allocated by the Subchapter V Trustee, with the Subchapter V Trustee to bring any claims against (and objections to claims) with respect to any insider.

7. Though the United States Trustee ("UST") has been critical, primarily of the Debtor's principals, the indefatigable efforts of Debtor's counsel, the guidance of the Subchapter V Trustee, and the support of non-insider creditors has ensured the Debtor is fulfilling its fiduciary duties. For example, the UST earlier attacked the sale of the business assets as a going concern raising allegations against of the Debtor, at a time when marketing was broad,

counteroffers were pursued aggressively, and as recognized by the Subchapter V Trustee, a going concern sale would generate far greater in amount for the estate than a liquidation.

8. Additionally, each of the potential recoveries highlighted in the Subchapter V Trustee's report are those either disclosed in the statement of financial affairs and/or provided to the Subchapter V Trustee as potential causes of action to be pursued for benefit of the estate. Indeed, the Subchapter V Trustee's report reveals that the Debtor's counsel promptly and readily provided all requested documents, with information as to potential recoveries having earlier in the case been provided to the Subchapter V Trustee for pursuit for the benefit of creditors.

9. For the above reasons, it is in the best interest of creditors and the estate that this case is not dismissed or converted to chapter 7.

WHEREFORE, the Debtor respectfully requests that the UST's Motion be denied.

Respectfully Submitted,

TOP LINE GRANITE DESIGN INC.

By its bankruptcy counsel

RIEMER & BRAUNSTEIN LLP

Dated: March 2, 2023

/s/ Alan L. Braunstein

Alan L. Braunstein (BBO #546042)

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Exhibit 1

Subject: FW: Top Line Closing

BDS.EmailID: 3d2d038f72084d1fbb83993f6f95bec1

From: John McAuliffe <john@jm-law.net>

Date: March 2, 2023 at 8:03:52 AM EST

To: Alan L Braunstein <ABraunstein@riemerlaw.com>, Macken Toussaint <mtoussaint@riemerlaw.com>

Subject: Top Line Closing

External E-Mail. Use caution opening links or attachments.

Good morning Alan,

I just want to update you both and let you know that I am working with Jim Simmons and Jim Kelly of Simmons Assoc., in Rhode Island, the Closing counsel for the lender, Summit Investments. As you know, the Lender is in Denver. They email here up to about midnight to keep this moving in order to meet the present time frame to Close by this Tuesday. I want to report we are all working on this & are on track. We are at the final stages of ironing out all the docs, etc. by the weekend so ready to go for Tuesday the 7th. In addition I have been in touch with Avidia's counsel and Andy Lizotte as well as Peter Nicosia (attorneys for Mr. Ramos regarding certain Lease amendments and covenants that Avidia and Summit will require and would go into effect post Closing.

The Buyers are working with the Lender's attorney through the Checklist and the Closing Agenda. My client has completed virtually all the final details the Lender needs (for the individual guarantees and additional pledged collateral) details that often take the most time are now complete.

So this transaction is moving fast forward and in the right direction and we will plan to send you a wire info request by Monday or sooner. I do have a conference call today at 11 am with Simmons to finalize all the loan docs and Agreements and will reach out if I have any questions.

I told Steve Weiss I would keep him updated as I will you folks. I will email towards the end of the day or earlier with any new updates.

Please let me know if you have any questions. We are in the Red Zone and almost across the goal-line.

Talk to you soon,

John

--

****PLEASE NOTE NEW MAILING ADDRESS****

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CERTIFICATE OF SERVICE

I, Alan L. Braunstein, with the law firm of Riemer & Braunstein LLP, hereby certify that, as of the date hereof, I have caused a copy of the **OBJECTION TO THE UNITED STATES TRUSTEE'S MOTION TO CONVERT OR DISMISS DEBTOR'S CHAPTER 11 CASE** to be served by E-mail, and by electronic notification (EN), as indicated, upon the interested parties listed below, and any other parties receiving electronic notification in this case.

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² A/k/a Design Top Line Granite, and aka Top Line Granite Design. The Debtor's name was changed from Brazil Stones Inc. in November 2005

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/s/ Alan L. Braunstein
Alan L. Braunstein

DATED: March 2, 2023

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